

**BY ORDER OF THE
SECRETARY OF THE AIR FORCE**

AIR FORCE INSTRUCTION 36-2603

18 SEPTEMBER 2017



Personnel

**AIR FORCE BOARD FOR
CORRECTION OF MILITARY
RECORDS (AFBCMR)**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

ACCESSIBILITY: Publications and forms are available for downloading or ordering on the e-Publishing website at www.e-Publishing.af.mil.

RELEASABILITY: There are no releasability restrictions on this publication.

OPR: SAF/MRBC

Pages:

Supersedes: AFI 36-2603, 5 March 2012

Certified by: SAF/MR
(Daniel R. Sitterly, SES)

Pages: 17

This instruction implements DoDD 1332.41, *Boards for Correction of Military Records and Discharge Review Boards*, and AFD 36-26, *Total Force Development*. It relates to procedures for correction of military records to remedy error or injustice and not to the Air Force Discharge Review Board (AFDRB). It tells how to apply for correction of military records and how the AFBCMR (the Board) considers applications. It implements the Board's statutory authority to act on applications. In collaboration with the Chief of Air Force Reserve (HQ USAF/RE), the Director of the Air National Guard (NGB/CF), and the Deputy Chief of Staff for Manpower, Personnel, and Services (HQ USAF/A1), the Assistant Secretary of the Air Force (Manpower and Reserve Affairs) (SAF/MR) develops Air Force Board For Correction of Military Records guidance. Ensure that all records created as a result of processes prescribed in this publication are maintained IAW Air Force Manual (AFMAN) 33-363, *Management of Records*, and disposed of IAW the Air Force Records Disposition Schedule (RDS) in the Air Force Records Information Management System (AFRIMS). This publication applies to the Air National Guard (ANG) and the Air Force Reserve (USAFR). The authorities to waive FOA level requirements in this publication are identified with a Tier ("T-0, T-1, T-2, T-3") number following the compliance statement. Refer recommended changes and questions about this publication to the Office of Primary Responsibility (OPR) using the AF Form 847, *Recommendation for Change of*

Publication; route AF Forms 847 from the field through the appropriate functional chain of command. This instruction may not be supplemented.

This instruction directs collecting and maintaining information subject to the Privacy Act of 1974 authorized by Title 10, United States Code (U.S.C) § 1034 and 1552. System of Records notice F036 SAFCB A, Air Force Correction Board Records, applies.

SUMMARY OF CHANGES

This document has been substantially revised and must be completely reviewed. Major changes include defining the authority of the Director, AFRBA to appoint AFBCMR panel members; expanding the authority of the Executive Director of the AFBCMR to return applications without action when all available avenues of administrative relief have not been exhausted, he or she determines the application is clearly frivolous, or the remedy that is requested is beyond the authority of the Board; defines a proper applicant; describes the Director's authority to reject a request for reconsideration of an application when an applicant fails to provide new and/or relevant evidence that was not reasonably discoverable when the original application was submitted; stipulates a three-year period from the date of an original AFBCMR decision in which to request a one-time reconsideration and incorporates authority of the Board to reconsider an application upon its own motion; incorporates modification of the definition of persons eligible to apply for relief to the Board in accordance with guidance issued by the Secretary of the Air Force (SAF) pursuant to 10 U.S.C. § 1552(g); incorporates guidance on the liberal consideration of post-traumatic stress disorder (or similar diagnosis) on requests to upgrade other than honorable characterizations of service (e.g., undesirable, under other than honorable conditions (UOTHC), bad conduct discharge (BCD), dishonorable discharge (DD), dismissal, etc.); incorporates statutory requirements in accordance 10 U.S.C. § 1552(g), as modified by the Fiscal Year (FY) 2015 National Defense Authorization Act (NDAA) § 521, that mandate that any medical opinion issued to the Board with respect to a member or former member of the armed forces who was diagnosed while serving in the armed forces as experiencing a mental health disorder shall include the opinion of a clinical psychologist or psychiatrist if the request relates to a mental health disorder; incorporates the statutory requirements in accordance with the FY 2015 NDAA § 547 that mandate a confidential review process for applicants who claim to be the victim of sexual assault; prescribes procedures under which a request for correction of a military record may be made if the request is made on behalf of a group of members or former members of the armed forces who were similarly harmed by the same error or injustice in accordance with the provisions of the 10 U.S.C. § 1552(b), as modified by the FY 2016 NDAA § 521; incorporates SAF/MR policy directing that senior leader (general officer and senior executive service) contact with the Air Force Review Boards Agency (AFRBA) be routed through the Director, AFRBA, or Principal Deputy Assistant Secretary of the Air Force, Manpower and Reserve Affairs; incorporates policy requiring advisory opinions pertaining to high-level decorations (Silver Star or higher), promotion issues, return to flying status, or containing allegations of reprisal to be signed by at least a colonel or GS-15 within the organization providing the advisory opinion.

1. Roles and Responsibilities.

1.1. **Secretary of the Air Force (SAF).** In accordance with 10 U.S.C. § 1552, *Correction of military records: claims incident thereto*, the SAF is authorized to correct any military record of the Department when the SAF considers it necessary to correct an error or remove an injustice. Such corrections shall be made by the Secretary acting through boards of civilians in the executive part of the Department.

1.2. **Assistant Secretary of the Air Force for Manpower and Reserve Affairs (SAF/MR).** SAF/MR exercises the authority under 10 U.S.C. § 1552 on behalf of the SAF. SAF/MR has further delegated this authority to the Director of the Air Force Review Boards Agency (AFRBA).

1.3. **Director, AFRBA:** The Director, AFRBA appoints all members of the Board. Board members must be members of the Senior Executive Service (SES) or hold the grade of GS-15. No one may be appointed a member of the Board within five years after relief from active duty as a commissioned officer of a regular component of an armed force, except by individual waiver approved by SAF/MR. This five-year waiting period will also apply to a reserve component commissioned officer, who after twenty years of active service, retired under 10 U.S.C. § 8911, 10 U.S.C. § 3911, or 10 U.S.C. § 6323.

1.4. **Executive Director, Air Force Board for Correction of Military Records (AFBCMR).** Administer and oversee the operation of the AFBCMR and develop and publish policy, procedures, and evaluation standards related to the correction of records process.

1.5. The AFBCMR operates within the Office of the Secretary of the Air Force according to 10 U.S.C. § 1552 and DoDD 1332.41, *Boards for Correction of Military Records (BCMR) and Discharge Review Boards (DRBs)*. The Board consists of civilians in the executive part of the Department of the Air Force who serve at the pleasure of the SAF. Three members constitute a quorum of the Board.

2. Board Responsibilities.

2.1. **Considering Applications.** The Board considers all applications properly brought before it. In appropriate cases, it recommends correction of military records to remove an error or injustice.

2.2. **Recommending Action.** When the Board determines an applicant has been the victim of reprisal in violation of 10 U.S.C. § 1034, or AFRPD 90-3, *Inspector General, the Complaints Resolution Program*, it may recommend to the SAF that disciplinary or administrative action be taken against those responsible for the reprisal.

2.3. **Deciding Cases.** The Board normally decides cases on the written evidence contained in the record. It is not an investigative body; therefore, the applicant bears the burden of providing evidence of an error or injustice. However, the Board may, in its discretion, hold a hearing or call for additional evidence or opinions in any case. Applicants may request a hearing; however the decision to grant a hearing is at the sole discretion of the Board.

3. Application Procedures.

3.1. **Who May Apply.** The following persons/entities are eligible to apply to the Board for corrections of Air Force records ("Applicants"):

- 3.1.1. Current or former members of the United States Air Force, the Air National Guard (ANG), the Air Force Reserve (USAFR), or their predecessor organizations;
- 3.1.2. Current or former members of other armed services for whom the United States Air Force maintains a record;
- 3.1.3. The heirs or legal representatives of persons identified in 3.1.1 and 3.1.2 above;
- 3.1.4. Dependents, spouses, or former spouses of persons identified in 3.1.1 and 3.1.2 above; and
- 3.1.5. Employees or former employees of the Department of the Air Force, except in regard to civilian employment matters.
- 3.1.6. Apart from applicants qualified under 3.1.3, no applicant is eligible to obtain a correction of another person's record, unless the application pertains to a group of current or former members submitted under the provisions of 10 U.S.C. § 1552(b), as implemented by paragraph 3.10 below, that authorize the SAF to make such an application. However, this restriction in no way limits the authority of Air Force offices to make administrative corrections in cases of manifest error.

3.2. **Obtaining Forms.** Applicants may obtain a DD Form 149, *Application for Correction of Military Record Under the Provisions of 10 U.S.C. § 1552*, and Air Force Pamphlet 36-2607, *Applicants' Guide to the Air Force Board for Correction of Military Records (AFBCMR)*, from any of the following sources:

- 3.2.1. From the internet at the Department of Defense Publishing website, <http://www.dtic.mil/whs/directives/forms/eforms/dd0149.pdf> (DD Form 149), or Air Force e-publishing website, <http://www.e-publishing.af.mil/> (AFPAM 36-2607).
- 3.2.2. Any Air Force personnel or publications distribution office.
- 3.2.3. Most veterans' service organizations.
- 3.2.4. The Air Force Review Boards Office, SAF/CMO, 550 C Street West, Suite 40, Joint Base San Antonio-Randolph, TX 78150-4742.
- 3.2.5. The AFBCMR, 1500 West Perimeter Road, Joint Base Andrews Naval Air Facility Washington, MD 20762.

3.3. **Preparation.** Before applying, applicants should:

- 3.3.1. Review Air Force Pamphlet 36-2607, *Applicants' Guide to the AFBCMR*.
- 3.3.2. Discuss their concerns with a Total Force Service Center representative, finance office, or other appropriate officials who can refer applicants to available avenues of administrative relief (e.g., performance reports – Evaluation Reports Appeals Board (ERAB), fitness test results – Fitness Assessment Appeals Board (FAAB), debts incurred while on active duty – Remissions Board, etc.) that do not require referral to the Board.

3.3.3. Exhaust all other available administrative remedies; otherwise, the Executive Director of the AFBCMR should administratively close the case, without prejudice, and return it without action.

3.4. Submitting the Application. Applicants should complete all applicable sections of the DD Form 149, including at least:

3.4.1. The name of the applicant or, when the applicant is an heir or legal representative, the name of the person whose record the applicant wishes the Board to correct. For group applications, see paragraph 3.10.

3.4.2. That person's social security number or military service number.

3.4.3. The applicant's current mailing address, e-mail address, and contact number(s). E-mail, when available, will be the primary means of communication between the AFBCMR staff and the applicant.

3.4.4. The error or injustice and specific correction to the military records required to remedy the alleged error or injustice. The applicant has the burden of providing evidence in support of their claim they are the victim of an error or injustice.

3.4.5. Legal proof of the applicant's status as heir or legal representative if requesting correction of another person's records.

3.4.6. The applicant's ink signature accompanying any paper or facsimile submission. A scanned or facsimile copy of the DD Form 149 is considered a legitimate application and may be transmitted via electronic means. The completion of an electronic fillable DD Form 149, found online, will require the use of a legitimate Department of Defense Common Access Card (CAC) or identity verified electronic or digital signature. If the applicant signs the form electronically without a verified signature, then he/she must also submit a scan of a notarized letter for the record stating the time and date the application was signed along with the submission. The person who is requesting a correction of his or her record must sign the application. If the individual whose record is at issue is deceased or cannot sign due to incompetency, the application may be signed by an heir or legal representative. Proof of death, incompetency, or power of attorney must accompany the application.

3.4.7. Applicants should mail the signed DD Form 149 and any supporting documents to the Air Force address on the back of the form if submitting in paper. To expedite processing, applicants may elect to file electronically. Electronic filing options include (1) email of submission to include the scanned or fillable DD Form 149 and supporting documents to saf.mrbr.tier1@us.af.mil, or (2) upload the scanned or fillable submissions through a secure web-based intake portal, similar to what is available via MyPers, if/when made available.

3.5. Meeting Time Limits. Applicants must file an application within 3 years after the error or injustice was discovered, or, with due diligence, should have been discovered. Timeliness is not measured strictly from the date of the action/event the applicant alleges makes them the victim of an error or injustice, but is measured from the date of when the error or injustice was discovered or should have been discovered by the applicant with reasonable diligence.

In accordance with federal law, time on active duty is not included in the 3-year period. An application filed later is untimely and may be denied by the Board on that basis.

3.5.1. The Board may excuse untimely filing in the interest of justice.

3.5.2. If the application is untimely filed, the applicant should explain why the application was untimely filed and why it would be in the interest of justice for the Board to waive the statute of limitations.

3.6. Stay of Other Proceedings. Applying to the AFBCMR does not stay other proceedings.

3.7. Representation by Counsel. Applicants may be represented by counsel, at their own expense.

3.7.1. The term “counsel” includes members in good standing of the bar of any state; accredited representatives of veteran or service organizations recognized under 38 U.S.C. § 5902; and other persons determined by the Executive Director of the Board to be competent to represent the interests of the applicant.

3.7.2. See DoDD 7050.06, *Military Whistleblower Protection* and AFI 90-301, *Inspector General Complaints Resolution*, for special provisions in cases processed under 10 U.S.C. § 1034.

3.8. Application format. Applicants must use the DD Form 149. Along with the DD Form 149, applicants or counsel may submit briefs in support of applications.

3.8.1. Briefs may not exceed 25 double-spaced pages; must be typed or computer-printed on one side of each page, with the left margin justified, with not more than 12 characters per inch and no less than one-inch margins on all sides; and must be assembled without staples or bindings to permit easy reproduction and digital scanning. Electronic submissions are encouraged.

3.8.2. The Board staff will return an illegible application or brief and administratively close the case without action. Although administrative closure in no way precludes an applicant from re-applying at a later date, it does not suspend the three-year statute of limitations to file an application.

3.8.3. The Board staff will return electronic applications or briefs that cannot be opened on receipt and will close the case without prejudice, as above.

3.8.4. Rebuttals to advisory opinions must not exceed 10 pages and must meet the other requirements for briefs.

3.8.5. Supporting documentary evidence may exceed the 25-page limit, but must meet certain other requirements for briefs, to include legibility, the requirement to be assembled without staples or bindings to permit easy reproduction and digital scanning, and be printed on one side of each page.

3.8.6. In rare, complex cases, the Executive Director of the Board may waive the limitations on the length of briefs.

3.9. Withdrawing Applications. Applicants may withdraw an application at any time before the Board's decision. Withdrawal does not stay the 3-year time limit.

3.10. Group Applications. In accordance with 10 U.S.C. § 1552(b), the SAF may file a request for correction of a military record if the request is made on behalf of a group of members or former members of the Regular Air Force, Air National Guard, Air Force Reserve (or predecessor organizations) who were similarly harmed by the same error or injustice. Such a request must be staffed to the SAF for approval by the applicable MAJCOM, FOA, or HAF functional 2-letter office prior to submission to the AFBCMR. The staff package must be staffed in accordance with HAF staffing procedures. No specified form is required. At a minimum, coordination with SAF/GC and SAF/MR is required before staffing the request to SAF/OS, which must include the following:

3.10.1. A list indicating each individual's name and social security number.

3.10.2. A comprehensive summary of the facts and circumstance surrounding the purported error or injustice perpetrated against the group of named individuals supporting a determination that the group of named individuals are substantially similarly situated and have an identical basis for relief.

3.10.3. A description of the administrative remedies exhausted prior to seeking relief through the AFBCMR. All administrative avenues of relief must have been exhausted prior to submitting the application.

3.10.4. A specific recommendation as to the exact manner in which the records of the named individuals should be corrected, as well as identification of the agency responsible to carry out the correction of records, should the Board recommend that relief be granted.

3.10.5. SAF/MR will return any application not meeting the requirements above to the proponent without action. The proponent bears the same burden of proof as any individual applicant and the three-year statute of limitations also applies, although the Board could excuse the failure to timely file if it is in the interest of justice to do so. The Air Staff proponent of the application will be notified of the outcome of the case before the Board and is responsible for notification of each member represented in the application.

3.11. Authority to Return Applications. The Executive Director of the Board, or person delegated authority to act on his/her behalf, may return an application without action if he or she determines the applicant is not eligible to apply; the application is clearly frivolous; the applicant has not exhausted all available and effective administrative remedies; the requested remedy is unclear or is beyond the authority of the Board.

4. Board Actions.

4.1. Board Information Sources. The applicant has the burden of providing sufficient evidence of material error or injustice. The Board will recommend relief only when a preponderance (more likely than not) of evidence substantiates that the applicant was a victim of an error or injustice. The Board may request the applicant furnish additional information regarding matters before the Board.

4.2. Although not an investigative body, the Board may obtain the following from any organization/official within the Air Force or Department of Defense:

4.2.1. Any and/or all available military records (personnel, medical, financial etc.).

4.2.2. Advisory opinions. Advisory opinions represent the one and only opportunity the Air Force will have to affirm its position on a case and set forth its rationale. Advisory opinions will be staffed to agencies with a suspense of no more than 30 days **(T-1)** and must contain the following:

4.2.2.1. A statement of whether or not the requested relief can be accomplished administratively, whether or not the applicant has exhausted such administrative means before pursuing relief to the Board, and whether or not the application was timely filed.

4.2.2.2. A clear and concise summary of the relevant facts of the case, the applicant's contentions, an analysis addressing the crux issues of the case, and a recommendation based on the applicable Air Force policy, regulatory requirements, or applicable law in effect at the time of the alleged error or injustice.

4.2.2.3. Regardless of the recommendation provided (e.g., grant or deny), the advisory opinion shall include instructions on specific corrective action to be taken if the Board recommends relief be granted.

4.2.2.4. If the matter before the Board pertains to a high-level decoration (Silver Star or higher), promotion issues, return to flying status, or contains allegations of reprisal, the opinion must be signed by at least a colonel (O-6) or GS-15 within the organization providing the advisory. **(T-1)**

4.2.2.5. In the case of an applicant who was diagnosed while serving in the armed forces as experiencing a mental health disorder and the requested correction to the military records relates to a mental health disorder, any medical advisory will contain the opinion of clinical psychologist or psychiatrist in accordance with the provisions of 10 U.S.C. § 1552(g).

4.2.2.6. Certain cases may require multiple advisory opinions from a command or field operating agency (FOA) (e.g. AFPC, ARPC, NGB, AFRC, etc.). In such cases, the perspectives of multiple offices may be consolidated into a single opinion, or take the form of individual advisory opinions from the various offices. If multiple advisories are rendered, the opinions must represent the position of the command/FOA, not the individual office, and any differences on a specific issue must be reconciled within the command/FOA prior to submission to the BCMR **(T-1)**.

4.2.2.7. Commands/FOAs will appoint a single point of contact who will manage the command/FOA's internal advisory opinion development, staffing, coordination, and accountability processes. **(T-1)**

4.2.3. Relevant investigative reports (e.g. Inspector General (IG), Office of Special Investigation (OSI), Accident Investigation Reports, etc.).

4.3. **Applicant Notification.** Applicants shall be given an opportunity to review and comment on all correspondence and communications (including advisory opinions) to or from the AFRBA and with an entity or person outside the AFRBA that pertain directly to the applicant's case or may have a material effect thereon. This rule applies to spoken or telephonic communications, which must be summarized. This rule does not apply to

classified information; release of information which is otherwise prohibited or privileged by law or regulation (e.g., privacy act); any record previously provided to the applicant or known to be possessed by the applicant (such as records of adverse administrative actions showing acknowledgement by the applicant); purely administrative correspondence; and any military record that is or may be provided to the applicant by the Secretary of the military department or other source.

4.3.1. The applicant will be given no more than 30 days to review and respond to the material described in paragraph 4.3. The application will be processed for the Board's consideration at the end of the 30-day period with the available evidence of record, or upon receipt of the applicant's rebuttal, whichever occurs first. Applicants will not contact offices of primary responsibility (OPR) to respond to advisory opinions. Any response to the advisory opinion(s) will be submitted to the Board in writing before the end of the 30-day period described above.

4.3.2. Requests for an extension of the 30-day period will not be granted. Title 10, U.S.C., Section 1557 requires the Board to adjudicate 90 percent of its cases within ten months, with no single case exceeding 18 months in processing. Therefore, given this strict processing timeline, extensions to the 30-day period cannot be granted without compromising the Board's ability to comply with the provisions of 10 U.S.C. § 1557. However, an applicant may request their case be administratively closed, without prejudice, until such time as they are ready to proceed. Once ready to proceed, the applicant must notify the Board staff in writing (e-mail or regular mail) so processing of the case to the Board may be resumed.

4.3.3. If, in response to the advisory opinion, or at any other time, the applicant amends an active application for correction of records, the application may be closed at the discretion of the Executive Director and the applicant will be instructed to file a new DD Form 149 so the requests can be aggregated and adjudicated simultaneously.

4.3.4. Any requests for the status of an application before the Board (applicant initiated or otherwise) will be referred to the Air Force Review Boards Agency. Applicants may not make contact with OPRs to ascertain the status of their application before the Board, nor will OPRs divulge information to an applicant on the adjudication of their case before the Board, but will refer the inquiry to the Board staff for a response to the applicant. OPR access to the BCMR system of record is for official use only based on a strict need-to-know.

4.4. Consideration by the Board. A panel consisting of at least three board members considers each application. One panel member serves as chair. The panel's actions constitute the actions of the Board.

4.5. Board Deliberations. Normally, only members of the Board and Board staff will be present during deliberations. The panel chair may permit observers for training purposes or otherwise in furtherance of the functions of the Board.

4.6. Board Hearings. Applicants may request a hearing before the Board. Whether or not the Board authorizes a formal hearing is predicated on its finding that the applicant's presence, with or without counsel, would materially add to its understanding of the issues involved. The Board has the sole discretion to determine whether to grant a hearing. See

DoDD 7050.06, *Military Whistleblower Protection* and AFI 90-301, *Inspector General Complaints Resolution*, for special provisions in cases processed under 10 U.S.C. § 1034.

4.6.1. The Executive Director, AFBCMR, will notify the applicant and counsel, if any, of the time and place of the hearing. Written notice will be mailed or electronically transmitted not less than 30 days in advance of the hearing unless the notice period is waived by the applicant. Any response by the applicant must be received not later than 15 days before the hearing date, accepting or declining the offer of a hearing and, if accepting, provide information pertaining to counsel and witnesses. The Board will decide the case based on the evidence of record if the applicant declines the hearing, fails to respond, or fails to appear.

4.6.2. When granted a hearing, the applicant may appear before the Board, with or without counsel, and may present witnesses. It is the applicant's responsibility to notify witnesses, arrange for their attendance at the hearing, and pay any associated costs.

4.6.3. The panel chair conducts the hearing, maintains order, and ensures the applicant receives a full and fair opportunity to be heard. Formal rules of evidence do not apply, but the panel will generally consider relevancy and materiality when weighing evidence. Witnesses other than the applicant will not be present except when testifying. Witnesses will testify under oath or affirmation. A recorder will record the proceedings verbatim. The chair will normally limit hearings to two hours but may allow more time if necessary.

4.7. The Board will not recommend denial of an application on the sole ground the issue already has been decided by the SAF, Secretary of Defense (SECDEF), or the President of the United States in another proceeding.

4.8. Liberal Consideration for Post-traumatic Stress Disorder (PTSD) and Related Conditions. Liberal consideration will be given in cases where an applicant has presented evidence of a diagnosis of PTSD, or symptoms resembling PTSD, in requests to upgrade their other than honorable discharge (e.g., undesirable, under other than honorable conditions (UOTHC), bad conduct discharge (BCD), dishonorable discharge (DD), dismissal, etc.), where the applicant claims there is a causal nexus between the PTSD or PTSD symptoms and the misconduct which precipitated the discharge. If applicable, the three-year statute of limitations prescribed in paragraph 3.5 will be waived by the Board.

4.9. Review of Sexual Assault Cases. The Board will utilize a confidential process by which an individual who was the victim of a sex-related offense during service in the Armed Forces may challenge the terms or characterization of the discharge or separation of the individual from the Armed Forces on the grounds the terms or characterization were adversely affected by the individual being the victim of such an offense. The Board will give due consideration to the psychological and physical aspects of the individual's experience in connection with the sex-related offense and determine what bearing such experience may have had on the circumstances surrounding the individual's discharge or separation from the Armed Forces. To ensure confidentiality, the Board staff will ensure the application pertaining to such a person is processed in such a way as to preclude the access of the application, advisory opinions, and the Board's ultimate decision, to those without a need to know. Final Records of Proceeding (ROP) in such cases will not be posted to the reading room without the consent of the applicant.

4.10. Board Recommendations. The panel's majority vote constitutes the action of the Board. The Board shall make a final written recommendation to the SAF, or SAF's delegee, based on determination on the following issues:

4.10.1. Whether the application was filed within 3 years after the error or injustice was reasonably discoverable and, if not, whether the applicant has demonstrated that it would be in the interest of justice to excuse the untimely filing. When the Board determines that an application is not timely, and does not excuse its untimeliness, the application will be denied on that basis.

4.10.2. Whether the applicant has demonstrated the existence of a material error or injustice that can be remedied effectively through correction of the applicant's military record and, if so, what corrections are needed to provide full and effective relief.

4.10.3. Whether the provisions of the 10 U.S.C. § 1034 apply to the application. This determination is needed only when the applicant invokes this protection, or when the question of its applicability is otherwise raised by the evidence.

4.10.4. In cases identified under paragraph 4.10.3, the Board may recommend to the SAF that disciplinary or administrative action be taken against any Air Force official whom the Board finds to have committed an act of reprisal against the applicant. Any determination on this issue will not be made a part of the Board's ROP in the case at hand and will not be given to the applicant, but will be provided directly to the SAF under separate cover (paragraph 2.2).

4.11. Record of Proceedings. The Board staff will prepare a ROP following deliberations which will include:

4.11.1. The name and vote of each Board member.

4.11.2. The application.

4.11.3. Briefs and written arguments.

4.11.4. Documentary evidence.

4.11.5. A hearing transcript if a hearing was held.

4.11.6. Advisory opinions (if obtained) and the applicant's related comments.

4.11.7. The findings, conclusions, and recommendations of the Board.

4.11.8. Minority reports, if any.

4.11.9. Other information necessary to show a true and complete history of the proceedings.

4.12. Minority Reports. There will be situations where, after deliberations, a voting panel member will disagree with the recommendation of the majority. In those instances, the dissenting panel member(s) may prepare a minority report, which may address any aspect of the case, explaining the rationale for their position.

4.13. Separate Communications. The Board may send comments or recommendations to the SAF as to administrative or disciplinary action against individuals found to have committed acts of reprisal prohibited by the Military Whistleblowers Protection Act and on

other matters arising from an application not directly related to the requested correction of military records. Such comments and recommendations will be separately communicated and will not be included in the record of proceedings or given to the applicant or counsel.

4.14. Final Action by the Board. The Board sends the record of proceedings describing its recommendations on each application to the SAF or to the SAF's delegee for final decision. For Military Whistleblower cases (10 U.S.C. § 1034), if the applicant is not satisfied with the final decision, it may be appealed to the SECDEF.

4.15. The Board may identify DoD or Air Force policies, instructions, guidance or practices that are leading to, or likely to lead to unsound organizational decisions, unfair results, waste of government funds or public criticism. The Board will forward such observations directly to the appropriate offices of the Secretariat, the Air Staff, or both, for review and evaluation. Such observations will not be included in the ROP.

5. Decision of the SAF. In accordance with Secretarial delegations of authority, the SAF, or the SAF's delegee, will direct such action as the SAF or delegee deems appropriate on each case, including returning the case to the Board for further consideration. Cases returned to the Board for further reconsideration will be accompanied by a brief statement of the reasons for such action. If the SAF or delegee does not accept the Board's recommendation, the decision will be in writing and will include a brief statement of the grounds for his or her final decision.

5.1. Decisions in Cases Under the Military Whistleblowers Protection Act. In resolving an application for the correction of records made by a member or former member of the armed forces who has alleged a personnel action prohibited by the Military Whistleblowers Protection Act, the Board may review the matter. The SAF will issue decisions on such cases within 180 days after the application is filed. If the SAF fails to issue a final decision within that time, the applicant shall be deemed to have exhausted administrative remedies and may appeal to the SECDEF or Federal Court as applicable. Additionally, unless the full relief requested is granted, the Board will inform the applicant of their right to request review of the decision by the SECDEF. Applicants will also be informed of the following:

5.1.1. The name and address of the official to whom the request for review must be submitted;

5.1.2. The request for review must be submitted within 90 days after receipt of the decision by the SAF;

5.1.3. The request for review must be in writing and include the applicant's name, address, email address, and telephone number; a copy of the application to the AFBCMR, the final decision of the SAF, and a statement of the specific reasons the applicant is not satisfied with the decision;

5.1.4. The request must be based on the Board record; requests for review based on factual allegations or evidence not previously presented to the Board will not be considered under this paragraph, but may be the basis for reconsideration by the Board under paragraph 6.

5.2. In cases under paragraph 5.1 which involve additional issues not cognizable under that paragraph, the additional issues may be considered separately by the Board under paragraphs 3 and 4. The special time limit in paragraph 5.1 does not apply to the decision concerning these additional issues.

5.3. In resolving an application for the correction of records made by a member or former member of the armed forces in which the request is based on an alleged incorrect Inspector General finding of reprisal by the applicant, if the Board considers the applicant to have raised potentially new matters, it will refer the applicant's new matters to the Air Force Inspector General (SAF/IG).

5.3.1. SAF/IG will determine if the applicant's matters are, in fact, new, relevant, and material; and if so, whether the new matters warrant that SAF/IG reopen their investigation.

5.3.2. If SAF/IG finds no new matters in the application, or determines that the new matters are not relevant or material to the original reprisal determination, it shall return the case to the Board within 30 days, informing the Board of their determination. SAF/IG may also submit their analysis of the applicant's new matters to DoD IG for oversight and approval.

5.3.3. If SAF/IG revises in any way their original findings of reprisal by the applicant, SAF/IG will refer the case to DoD IG for statutorily required oversight and approval. Upon receipt of DoD IG's final approval, the case will be returned to the Board within 15 days.

5.3.4. Regardless of SAF/IG's determinations in paragraphs 5.3.1, 5.3.2, and 5.3.3, SAF/IG shall provide an advisory to the Board regarding its determination(s). At a minimum, the advisory shall address the applicant's contentions and provide a recommendation for granting or denying the requested relief.

5.4. In all cases, all relevant Inspector General records will be made available to the Board for their use in cases under paragraph 5.3 which involve additional issues not cognizable under that paragraph, the additional issues may be considered separately by the Board under paragraphs 3 and 4. The special time limit in paragraph 5.1 does not apply to the decision concerning these additional issues.

6. Reconsideration of Applications. The Board may reconsider an application if the applicant, within 3 years of the original decision, submits newly discovered relevant evidence that was not reasonably available when the application was previously considered. The request for reconsideration must be accompanied by a new DD Form 149, bearing the applicant's signature and describing the specific correction requested, as well as the reasons the applicant believes he or she is the victim of an error or injustice. Each request for reconsideration will be screened to determine whether or not it contains new and relevant evidence that was not available or reasonably discoverable when the original application was filed. New arguments about, or analysis of evidence already considered and additional statements that are cumulative to those already in the record of proceedings will not be considered new evidence. The Board may also reconsider an application upon its own motion.

6.1. If the request does not contain new evidence, the Executive Director or the Executive Director's designee will return it to the applicant without referral to the Board.

6.2. If the request contains new evidence, the Executive Director or his or her designee will refer it to a panel of the Board for a decision. The Board will decide the relevance and weight of any new evidence and whether it was reasonably available to the applicant when the application was previously considered. The Board may deny reconsideration if the new evidence is not relevant to the original matter or if it was reasonably available to the applicant when the original application was submitted. Otherwise, if the Board deems the evidence new and relevant, it will reconsider the case on the merits. In any case, an ROP will be prepared by the AFBCMR staff in accordance with paragraph 4.11.

6.3. If the AFBCMR receives a request for reconsideration more than 3 years after the Board's original decision, the case will be returned without action and the applicant will be advised the next remedy is appeal to a court of appropriate jurisdiction.

7. Action After Final Decision.

7.1. **Action by the Executive Director.** The Executive Director or his or her designee will inform the applicant or counsel, if any, of the final decision on the application. If any requested relief was denied, the Executive Director will advise the applicant of reconsideration procedures and, for cases processed under 10 U.S.C. § 1034, procedures for review by SECDEF. The Executive Director will send decisions requiring corrective action (directives) to the Chief of Staff of the Air Force (or appropriate designee) for necessary action. These directives are final and conclusive on all officers of the government. Directives will be staffed to command/FOA/Air Force/DoD agency responsible for promulgating the corrective action. Corrective action should be taken within 30 days **(T-1)** of the date of the instrument and copies of corrected documents should be provided to the Air Force Review Boards Agency Case Management Office. Commands/FOAs (e.g. AFPC, AFRC, NGB, AFRC, etc.) will appoint a single point of contact to manage the directive promulgation process. **(T-1)**

7.2. **Settlement of Claims.** The Air Force is authorized, under 10 U.S.C. § 1552, to pay claims for amounts due to applicants as a result of correction of military records.

7.2.1. The Executive Director will furnish the Defense Finance and Accounting Service (DFAS) with AFBCMR decisions potentially affecting monetary entitlement or benefits. DFAS will treat such decisions as claims for payment by or on behalf of the applicant.

7.2.2. DFAS settles claims on the basis of the corrected military record. Computation of the amount due, if any, is a function of DFAS. Applicants may be required to furnish additional information to DFAS to establish their status as proper parties to the claim and to aid in deciding amounts due.

7.2.3. Earnings received from civilian employment during any period for which active duty pay and allowances are payable will be deducted from the settlement. Amounts found due will be offset by the amount of any existing indebtedness to the government.

7.2.4. **Payment of Expenses.** The Air Force has no authority to pay expenses of any kind incurred by or on behalf of an applicant in connection with a correction of military records under 10 U.S.C. § 1034 or § 1552.

7.3. **Public Access to Decisions.** After deletion of personal information, AFBCMR decisions will be made available for review and copying via an electronic public reading room at http://boards.law.af.mil/AF_BCMR.htm.

8. Miscellaneous Provisions.

8.1. **Access to Records.** Applicants will have access to all records considered by the Board, except those exempted by law. Inasmuch as the AFBCMR is not the custodian for master personnel records, any applicant requesting these records will be referred to the National Personnel Records Center (NPRC), 1 Archive Drive, St. Louis, MO 63138, (314) 801-0800, <http://www.archives.gov/st-louis>, or, if still serving, the appropriate servicing personnel agency.

8.2. **Senior Leaders Communications with Air Force Review Boards Agency.** Any inquiry about a specific pending case before the AFBCMR by a senior official (general officer or Senior Executive Service (SES)) should be routed through the Director, AFRBA or the Principal Deputy Assistant Secretary of the Air Force (Manpower and Reserve Affairs).

DANIEL R. SITTERLY

Acting Assistant Secretary of the Air Force
Manpower and Reserve Affairs

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

Fiscal Year 2015 National Defense Authorization Act (NDAA), Sections 521 and 547

Title 10, United States Code (U.S.C.), Section 1552

Title 10, U.S.C., Section 1556

Title 10, U.S.C., Section 1557

Title 10, U.S.C., Section 1034

DoDD 1332.41, *Boards for Correction of Military Records and Discharge Review Boards*, 8 March 2004

DoDD 7050.06, *Military Whistleblower Protection*, 15 April 2015

AFPD 90-3, *Inspector General, the Complaints Resolution Program*, 9 June 2016

AFI 90-301, *Inspector General Complaints Resolution*, 27 August 2015

AFMAN 33-363, *Management of Records*, 1 March 2008

AFPAM 36-2607, *Applicants' Guide to the Air Force Board for Correction of Military Records (AFBCMR)*, 3 November 1994

Secretary of Defense Memorandum, Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder, 3 September 2014, and Acting Principal Deputy Secretary of Defense for Personnel and Readiness (OUSD-P&R) memorandum, Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records (BCMRs/BCNR) by Veterans Claiming Post Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI), 24 February 2016.

SAF/MR Memorandum, Senior Leader Communications with Air Force Review Boards Agency, dated 5 October 2011

SAF/MR Memorandum, Preparation of Advisory Opinions before the Air Force Board for Correction of Military Records (AFBCMR), dated 20 June 2012

Adopted Forms

DD Form 149, *Application for Correction of Military Records*, December 2014

AF Form 847, *Recommendation for Change of Publication*, 22 September 2009

Abbreviations and Acronyms

AFBCMR—Air Force Board for Correction of Military Records

AFDRB—Air Force Discharge Review Board

AFI—Air Force Instruction

AFMAN—Air Force Manual

AFPC—Air Force Personnel Center

AFRBA—Air Force Review Boards Agency

AFRC—Air Force Reserve Command

AFRIMS—Air Force Records Information Management System

ARPC—Air Reserve Personnel Center

BCD—Bad Conduct Discharge

CAC—Common Access Card

DD—Dishonorable Discharge

DFAS—Defense Finance and Accounting Service

FOA—Field Operating Agency

NDAA—National Defense Authorization Act

NGB—National Guard Bureau

OPR—Office of Primary Responsibility

PTSD—Post-traumatic Stress Disorder

RDS—Records Disposition Schedule

SECDEF—Secretary of Defense

U.S.C—United States Code

UOTHC—Under Other Than Honorable Conditions